


BEFORE THE ARIZONA CORPORATION COMMISSION  
DOCKETED

CARL J. KUNASEK  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
WILLIAM A. MUNDELL  
COMMISSIONER

OCT 06 1999

DOCKETED BY



IN THE MATTER OF THE APPLICATION OF  
ARIZONA PUBLIC SERVICE COMPANY FOR  
APPROVAL OF ITS PLAN FOR STRANDED  
COST RECOVERY.

E - 0 1 345A-98-0473

IN THE MATTER OF THE FILING OF ARIZONA  
PUBLIC SERVICE COMPANY OF UNBUNDLED  
TARIFFS PURSUANT TO A.A.C. RI 4-2- 160 1 ET  
SEQ.

DOCKET NO. E-O 1345A-97-0773

IN THE MATTER OF COMPETITION IN THE  
PROVISION OF ELECTRIC SERVICES  
THROUGHOUT THE STATE OF ARIZONA.

DOCKET NO. RE-00000C-94-0165

DECISION NO. 61973

OPINION AND ORDER

DATES OF HEARING:

July 12, 1999 (pre-hearing conference), July 14, 15, 16,  
19, 20, and 21, 1999

PLACE OF HEARING:

Phoenix, Arizona

PRESIDING OFFICER:

Jerry L. Rudibaugh

IN ATTENDANCE:

Carl J. Kunasek, Chairman  
Jim Irvin, Commissioner

APPEARANCES:

Mr. Steven M. Wheeler, Mr. Thomas Mumaw and Mr.  
Jeffrey B. Guldner, SNELL & WILMER, LLP, on  
behalf of Arizona Public Service Company;

Mr. C. Webb Crockett and Mr. Jay Shapiro,  
FENNEMORE CRAIG, on behalf of Cyprus Climax  
Metals, Co., ASARCO, Inc., and Arizonans for Electric  
Choice & Competition;

Mr. Scott S. Wakefield, Chief Counsel, and Ms. Karen  
Nally on behalf of the Residential Utility Consumer  
Office;

Ms. Betty Pruitt on behalf of the Arizona Community  
Action Association;

Mr. Timothy Hogan on behalf of the Arizona  
Consumers Council;

1 Mr. Robert S. Lynch on behalf of the Arizona  
2 Transmission Dependent Utility Group;

3 Mr. Walter W. Meek on behalf of the Arizona Utility  
4 Investors Association;

5 Mr. Douglas C. Nelson DOUGLAS C. NELSON, P.C.,  
6 on behalf of Commonwealth Energy Corporation;

7 Mr. Lawrence V. Robertson, Jr., MUNGER &  
8 CHADWICK, and Ms. Leslie Lawner, Director  
9 Government Affairs on behalf of Enron Corporation,  
10 and Mr. Robertson on behalf of PG&E Energy Services;

11 Mr. Lex J. Smith, BROWN & BAIN, P.A., on behalf of  
12 Illinova Energy Partners and Semptra Energy Trading;

13 Mr. Randall H. Werner, ROSHKA, HEYMAN &  
14 DeWULF, P.L.C., on behalf of NEV Southwest;

15 Mr. Norman Furuta on behalf of the Department of the  
16 N a v y ;

17 Mr. Bradley S. Carroll on behalf of Tucson Electric  
18 Power Company; and

19 Mr. Christopher C. Kempley, Assistant Chief Counsel  
20 and Ms. Janet F. Wagner, Staff Attorney, Legal Division  
21 on behalf of the Utilities Division of the Arizona  
22 Corporation Commission.

23 **BY THE COMMISSION:**

24 On December 26, 1996, the Arizona Corporation Commission ("Commission") in Decision  
25 No. 59943 enacted A.A.C. R14-2-1601 through R14-2-1616 ("Rules" or "Electric Competition  
26 Rules").

27 On June 22, 1998, the Commission issued Decision No. 60977, the Stranded Cost Order  
28 which required each Affected Utility to file a plan for stranded cost recovery.

On August 10, 1998, the Commission issued Decision No. 61071 which made modifications  
to the Rules on an emergency basis.

On August 21, 1998, Arizona Public Service Company ("APS") filed its Stranded Costs plan.

On November 5, 1998, APS filed a Settlement Proposal that had been entered into with the  
Commission's Utilities Division Staff ("Staff Settlement Proposal"). Our November 24, 1998  
Procedural Order set the matter for hearing. On November 25, 1998, the Commission issued

Decision No. 61259 which established an expedited procedural schedule for evidentiary hearings on the Staff Settlement Proposal.

On November 30, 1998, the Arizona Attorney General's Office, in association with numerous other parties, filed a Verified Petition for Special Action and Writ of Mandamus with the Arizona Supreme Court ("Court") regarding the Commission's November 25, 1998 Procedural Order, Decision No. 61259. The Attorney General sought a Stay of the Commission's consideration of the Staff Settlement Proposal with APS and Tucson Electric Power Company ("TEP").

On December 1, 1998, Vice Chief Justice Charles J. Jones granted a Motion for Immediate Stay of the Procedural Order. On December 9, 1998, the Commission Staff filed a notice with the Supreme Court that the Staff Settlement Proposal had been withdrawn from Commission consideration.

On April 27, 1999, the Commission issued Decision No. 61677, which modified Decision No. 60977. On May 17, 1999, APS filed with the Commission a Notice of Filing, Application for Approval of Settlement Agreement ("Settlement" or "Agreement")<sup>1</sup> and Request for Procedural Order.

Our May 25, 1999 Procedural Order set the matter for hearing commencing on July 14, 1999.

This matter came before a duly authorized Hearing Officer of the Commission at its offices in Phoenix, Arizona. APS, Cyprus Climax Metals, Co., ASARCO, Inc., Arizonans for Electric Choice & Competition ("AECC"), Residential Utility Consumer Office ("RUCO"), the Arizona Community Action Association ("ACAA"), the Arizona Consumers Council, the Arizona Transmission Dependent Utility Group, the Arizona Utility Investors Association, Em-on Corporation, PG&E Energy Services, Illinova Energy Partners, Sempra Energy Trading, NEV Southwest, the Department of the Navy, Tucson Electric Power Company, Commonwealth Energy Corporation

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<sup>1</sup> The Parties to the Proposed Settlement are as follows: the Residential Utility Consumer Office, Arizona Public Service Company, Arizona Community Action Association and the Arizonans for Electric Choice and Competition which is a coalition of companies and associations in support of competition that includes Cable Systems International, BHP Copper, Motorola, Chemical Lime, Intel, Honeywell, Allied Signal, Cyprus Climax Metals, Asarco, Phelps Dodge, Homebuilders of Central Arizona, Arizona Mining Industry Gets Our Support, Arizona Food Marketing Alliance, Arizona Association of Industries, Arizona Multi-housing Association, Arizona Rock Products Association, Arizona Restaurant Association, Arizona Retailers Association, Boeing, Arizona School Board Association, National Federation of Independent Business, Arizona Hospital Association, Lockheed Martin, Abbot Labs and Raytheon.

1 ("Commonwealth") and Staff of the Commission appeared through counsel. Evidence was presented  
 2 concerning the Settlement Agreement, and after a full public hearing, this matter was adjourned  
 3 pending submission of a Recommended Opinion and Order by the Presiding Officer to the  
 4 Commission. In addition, a post-hearing briefing schedule was established with simultaneous briefs  
 5 filed on August 5, 1999.

## 6 DISCUSSION

### 7 Introduction

8 The Settlement provides for rate reductions for residential and business customers; sets the  
 9 amount, method, and recovery period of stranded costs that APS can collect in customer charges;  
 10 establishes unbundled rates; and provides that APS will separate its generating facilities, which will  
 11 operate in the competitive market, from its distribution system, which will continue to be regulated.

12 According to APS, the Settlement was the product of months of hard negotiations with  
 13 various customer groups. APS opined that the Settlement provides many clear benefits to customers,  
 14 potential competitors, as well as to APS. Some of those benefits as listed by APS are as follows:

- 15 • Allowing competition to commence in APS' service territory months before otherwise  
 16 possible and expanding the initial eligible load by 140 MW;
- 17 • Establishing both Standard Offer and Direct Access rates, and providing for annual  
 18 rate reductions with a cumulative total of as much as \$475 million by 2004;
- 19 • Ensuring stability and certainty for both bundled and unbundled rates;
- 20 • Resolving the issue of APS' stranded costs and regulatory asset recovery in a fair and  
 21 equitable manner;
- 22 • Providing for the divestiture of generation and competitive services by APS in a cost-  
 23 effective manner;
- 24 • Removing the specter of years of litigation and appeals involving APS and  
 25 Commission over competition-related issues;
- 26 • Continuing support for a regional ISO and the AISA;
- 27 • Continuing support for low income programs; and
- 28 • Requiring APS to file an interim code of conduct to address affiliate relationships.

The Settlement was entered into by RUCO and the ACAA reflecting Agreement by residential customers of APS to the Settlement's terms and conditions. In addition, the Settlement was executed by the AECC, a coalition of commercial and industrial customers and trade associations. AECC opined that since residential and non-residential customers have agreed to the Settlement, the "public interest" has been served. AECC indicated the Settlement was not perfect but was the result of "give and take" by each of the parties. Accordingly, AECC urged the Commission to protect the "public interest" by approving the Settlement and not allow Energy Service Providers ("ESPs") to delay the benefits that competition has to offer.

Legal Issues:

The Arizona Consumers Council ("Consumers Council") opined that the Agreement was not legal because: (1) there was no MI rate proceeding<sup>2</sup>; (2) Section 2.8 of the Agreement violates A.R.S. Section 40-246, regarding Commission initiated rate reductions; and (3) the Agreement illegally binds future Commissions. According to the Consumers Council, the Commission does not have evidence to support a finding that the rates proposed in the Agreement are just and reasonable; that the rate base proposed is proper; and asserted the proposed adjustment clause can not be established outside a general rate case.

Staff argued that the Commission in Decision No. 59601, dated April 26, 1996, has previously determined just and reasonable rates for APS which must be charged until changed in a rate proceeding. According to Staff, this case is not about changing existing rates, -but instead involves the introduction of a new service - direct access. The direct access rates have been designed to replicate the revenue flow from existing rates. Staff opined that the Commission has routinely, and lawfully, approved rates for new services outside of a rate case. Further, Staff asserted that the rates proposed in the Settlement are directly related to a complete financial review. Staff indicated that the Consumers Council has provided no contrary information and should not be allowed to collaterally attack Decision No. 59601.

APS argued that no determination of fair value rate base ("FVRB"), fair value rate of return

<sup>2</sup> Although the Consumers Council indicated they did not believe a full rate proceeding was necessary, it is unclear as to the type of proceeding the Consumers Council believed was necessary.

1 (“FVROR”), or other financial analysis is legally necessary to justify current APS rate levels, allow  
 2 the introduction of a new service, or to evaluate a series of voluntary rate decreases. In spite of that,  
 3 APS did provide information to support a FVRB of \$5,195,675,000 and FVROR of 6.63 percent. No  
 4 other party presented evidence in support of a FVRE? or FVROR. Staff supported APS.

5 We concur with Staff and APS. The Consumers Council has provided no legal authority that  
 6 a full rate proceeding is necessary in order to adopt a rate reduction or rates for new services.  
 7 Further, pursuant to the Arizona Constitution, the Commission has jurisdiction over ratemaking  
 8 matters. We also find that notice of the application and hearing was provided and that APS has  
 9 provided sufficient financial information to support a finding of FVRB and FVROR. Lastly, this  
 10 Commission can clearly bind future Commissions as a result of its Decision. However, as later  
 11 discussed, we **agree** there are limitations to such legal authority.

## 12 Shopping Credit

13 One of the most contentious issues in the hearing was the level of the “shopping credit.” The  
 14 “shopping credit” is the difference between the customer’s Standard Offer Rate and the Direct Access  
 15 Rate available to customers who take service from ESPs. The ESPs generally argued that the  
 16 Settlement’s “shopping credits” were not sufficient to allow a new entrant to make a profit. AECC  
 17 opined that such an argument was nothing more than a request to increase ESP’s profits.

18 Staff opined that the “shopping credit” was too low and recommended it be increased without  
 19 impacting the stranded cost recovery amount of \$350 million. Under Staffs proposal, the increased  
 20 “shopping credit” would be offset by reducing the competitive transition charge (“CTCs”). Further,  
 21 Staff recommended that any stranded costs not collected could simply be deferred and collected after  
 22 2004.

23 The AECC expert testified that the “shopping credit” under de Agreement was superior to the  
 24 “Shopping Credit” in the Staff Settlement Proposal ‘as well as the one offered to SRP’s customers.  
 25 APS argued that artificially high shopping credits will likely increase ESP profits without lowering  
 26 customer rates and will encourage inefficient firms to enter the market. Based on the analysis of the  
 27

40kW to 200 kW customer group<sup>3</sup>, APS showed an average margin on the “shopping credit” of over 8 mils per kWh or a 23 percent markup over cost. APS asserted that the test for a reasonable “shopping credit” “should not be whether all ESPs can profit on all APS customers all of the time”.

Based on the evidence presented, the “shopping credits” appear to be reasonable to allow ESPs to compete in an efficient manner. Further, we do not find customer rates should be increased simply to have higher “shopping credits”.

#### Metering and Billing Credits

The metering and billing credits resulting from the Agreement are based on decremental costs. Several of the ESPs and Staff argued that these credits should be based upon embedded costs and not decremental costs. APS responded that such a result could cause them to lose revenues since its costs would only go down by the decremental amounts. Staff testified that the Company would not lose significant income if it used embedded costs since it would free up resources to service new customers.

We concur. The proposed credits for metering, meter reading and billing<sup>4</sup> will result in a direct access customer paying a portion of APS costs as well as a portion of the ESP’s costs. We believe this would stymie the competitive market for these services. As a result, we find the approval of the Settlement should be conditioned upon the use of Staffs proposed credits for metering, meter reading, and billing.

#### Proposed One-Year Advance Notice Requirement:

Section 2.3 provides that

“Customers greater than 3MW who chose a direct access supplier must give APS one year’s advance notice before being **eligible** to return to Standard Offer service.”  
[emphasis added]

Several parties expressed concerns that the one-year notice requirement to **return** to Standard Offer service would create a deterrent to load switching by large industrial, institutional and commercial customers. PG&E proposed that any increased cost could be charged directly to the

<sup>3</sup> Represents over 80 percent of the general service customers for competitive access in phase one.

<sup>4</sup> For example, the **monthly** credits for a direct access residential customers are \$1.30, \$0.30, and \$0.30 for metering, meter reading and billing, respectively.

customer as a condition to its return.

We agree that APS needs to have some protection from customers leaving the system when market prices are **low** and jumping back on Standard Offer rates when market prices go up. The suggestion by PG&E that the customer be allowed to go back to the Standard Offer if the customer pays for additional costs it has caused is a reasonable resolution. Accordingly, we will order APS to submit substitute language on this issue.

#### Section 2.8

Several of the parties expressed concern that Section 2.8 of the Agreement allows APS to seek rate increases under specified conditions. Additionally, as previously discussed, the Consumers Council opined that Section 2.8 violated A.R.S. Section 40-246. Staff recommended the Commission condition approval of the Agreement on Section 2.8 **being** amended to include language that the Commission or Staff may commence rate change proceedings under conditions paralleling those provided to the utility, including response to petitions submitted under A.R.S. § 40-246.

We agree that Section 2.8 is too restrictive on the Commission's future action. Accordingly, we will condition approval of the Agreement on inclusion of the following language in Section 2.8:

Neither the Commission nor APS shall be prevented from seeking or authorizing a change in unbundled or Standard Offer rates prior to July 1, 2004, in the event of (a) conditions or circumstances which constitute an emergency, such as an inability to **finance** on reasonable terms, or (b) material changes in APS' cost of service for Commission-regulated services resulting from federal, tribal, state or local laws, regulatory requirements, judicial decisions, actions or orders. Except for the changes otherwise specifically contemplated by this Agreement, unbundled and Standard Offer rates shall remain unchanged until at least July 1, 2004.

#### Section 7.1

The Consumers Council opined that there was language in the Agreement which would illegally bind future Commissions. While Staff disagreed with the **legal opinion** of the Consumers Council, Staff was concerned with some of the binding **language** in the Agreement and in particular **with the** following language in Section 7.1:

7.1. To the extent any provision of this Agreement is inconsistent with any existing or future Commission order, rule or regulation or is inconsistent with the Electric



1 Competition Rules as now existing or as may be amended in the future, the provisions of  
2 this Agreement shall control and the approval of the Agreement by the Commission shall  
3 be deemed to constitute a Commission-approved variation or exemption to any  
4 conflicting provision of the Electric Competition Rules.

5 Staff recommended the Commission not approve Section 7.1.

6 We share Staff's concerns. We also recognize that the parties want to preserve their benefits  
7 to their Agreement. We agree with the parties that to the extent any provision of the Agreement is  
8 inconsistent with the Electric Competition Rules as finalized by the Commission in September 1999,  
9 the provisions of the Agreement shall control. We want to make it clear that the Commission does  
10 not intend to revisit the stranded cost portion of the Agreement. It is also not the Commission's  
11 intent to undermine the benefits that parties have bargained for. With that said, the Commission must  
12 be able to make rule changes/other future modifications that become necessary over time. As a  
13 result, we will direct the parties and Staff to file within 10 days, a revised Section 7.1 consistent with  
14 the Commission's discussions herein and subsequently approved by this Commission.

#### 15 Generation Affiliate

16 Section 4.1 of the Agreement provides the following:

17 4.1 The Commission will approve the formation of an affiliate or affiliates of APS  
18 to acquire at book value the competitive services assets as currently required by the  
19 Electric Competition Rules. In order to facilitate the separation of such assets  
20 efficiently and at the lowest possible cost, the Commission shall grant APS a two-year  
21 extension of time until December 31, 2002, to accomplish such separation. A similar  
22 two-year extension shall be authorized for compliance with A.A.C. R14-2-1606(B).

23 Related to Section 4.1 is Section 2.6(3) which allows APS to defer costs of forming the generation  
24 affiliate, to be collected beginning July 1, 2004.

25 According to NEV Southwest, APS indicated that it intends to establish a generation affiliate  
26 under Pinnacle West, not under APS. Further, that APS intends to procure generation for standard  
27 offer customers from the wholesale generation market as provided for in the Electric Competition  
28 Rules. Additionally, it was NEV Southwest's understanding that the affiliate generation company  
29 could bid for the APS standard offer load under an affiliate FERC tariff, but there would be no  
30 automatic privilege outside of the market bid. NEV Southwest supports the aforementioned concepts  
31 and recommended they be explicitly stated in the Agreement.

32 We concur with NEV Southwest. We shall order APS to include language as requested by

NEV Southwest. Power for Standard Offer Service will be acquired in a manner consistent with the Commission's Electric Competition Rules. We generally support the request of APS to defer those costs related to formation of a new generation affiliate pursuant to the Electric Competition Rules. We also recognize the Company is making a business decision to transfer the generation assets to an affiliate instead of an unrelated third party. As a result, we find the Company's proposed mitigation of stranded costs' in the Settlement should also apply to the costs of forming the new generation affiliate. Accordingly, Section 2.6(3) should be modified to reflect that only 67 percent of those costs to transfer generation assets to an affiliate shall be allowed to be deferred for future collection.

Some parties were concerned that Sections 4.1 and 4.2 provide in effect that the Commission will have approved in advance any proposed financing arrangements associated with future transfers of "competitive services" assets to an affiliate. As a result, there was a recommendation that the Commission retain the right to review and approve or reject any proposed financing arrangements. In addition, some parties expressed concern that APS has not definitively described the assets it will retain and which it will transfer to an affiliate.

We share the concerns that the non-competitive portion of APS not subsidize the spun-off competitive assets through an unfair financial arrangement. We want to make it clear that the Commission will closely scrutinize the capital structure of APS at its 2004 rate case and make any necessary adjustments. The Commission supports and authorizes the transfer by APS to an affiliate or affiliates of all its generation and competitive electric service assets as set forth in the Agreement no later than December 31, 2002. However, we will require the Company to provide the Commission with a specific list of any assets to be so transferred, along with their net book values at the time of transfer, at least thirty days prior to the actual transfer. The Commission reserves the right to verify whether such specific assets are for the provision of generation and other competitive electric services or whether there are additional APS assets that should be so transferred.

#### Unbundled Rates

Several parties expressed concern that the Agreement's unbundled rates fail to provide the

Agreement to not recover \$ 183 million out of a claimed \$533 million.

1 necessary information to determine whether a competitor's price is lower than the Standard Offer  
2 rate. Further, some of the parties asserted that APS has not performed a functional cost-of-service  
3 study and as a result the Settlement's "shopping credit" is an artificial division of costs. In response,  
4 APS indicated the Standard Offer rates can not be unbundled on a strict cost-of-service basis unless  
5 the Standard Offer rates are redesigned to equal cost-of-service. APS opined that such a process  
6 would result in significant rate increases for many customers.

7 AECC asserted that a full rate case would result in additional months/years of delay with  
8 continued drain of resources by all interested entities.

9 The ESPs asserted that the bill format proposed by APS is misleading and too complex. In  
10 general, the ESPs desired a bill format that would allow customers to easily compare Standard Offer  
11 and Direct Access charges in order to make an informed decision. As a result, APS was directed to  
12 circulate an Informational Unbundled Standard Offer Bill ("Bill") to the parties for comments.  
13 Subsequent to the hearing, a Bill was circulated to the parties for comments to determine what  
14 consensus could be reached on its format. In general, there was little dispute with the format of the  
15 Bill. However, PG&E and Commonwealth disagreed with the underlying cost allocation  
16 methodologies. Enron was concerned that the Bill portrayed the Standard Offer to be more simplistic  
17 than the Direct Access portion of the Bill. Enron proposed a bill format that would clearly identify  
18 those services which are available from an ESP. Based on comments from RUCO and Staff, APS  
19 made general revisions to the proposed Bill.

20 We find the APS Attachment AP-IR, second revised dated 8/16/99 provides sufficient  
21 information in a concise manner to enable customers to make an informed choice. (See Attachment  
22 No. 2 herein). However, we find the Enron breakdown into a Part 1 versus Parts 2 and 3 will further  
23 help educate customers as to choice. We will direct APS to further revise its Bill to have a Part 1 as  
24 set forth by the Enron breakdown. We believe Parts 2 and 3 can be combined for simplicity.

25 We concur with APS that it is not necessary to file a revised cost-of-service study at this time.  
26 The proposed Standard Offer rates contained in the Settlement are based on existing tariffs approved  
27 by this Commission. Further, we concur with AECC that a full rate case with a revised cost-of-  
28 service study would result in months/years of additional delay. Lastly, the Standard Offer rates as

proposed in the Settlement are consistent with the Commission's requirement that no customer shall receive a rate increase. The following was extracted from Decision No. 61677:

"No customer or customer class shall receive a rate increase as a result of stranded cost recovery by an Affected Utility under any of these options."

#### Code of Conduct

There were concerns expressed that APS would be writing its own Code of Conduct. Subsequently, APS did provide a copy of its proposed Code of Conduct to the parties for comment. Several parties also expressed concern that any Code of Conduct would not cover the actions of a single company during the two-year delay for transferring generation assets.

Based on the above, we will direct APS to file with the Commission no later than 30 days of the date of this Decision, its interim Code of Conduct. We will direct APS to file its revised Code of Conduct within 30 days of the date of this Decision. Such Code of Conduct should also include provisions to govern the supply of generation during the two-year period of delay for the transfer of generation assets so that APS doesn't give itself an undue advantage over the ESPs. All parties shall have 60 days from the date of this Decision to provide their comments to APS regarding the revised Code of Conduct. APS shall file its final proposed Code of Conduct within 90 days of the date of this Decision. Subsequently, within 10 days of filing the Code of Conduct, the Hearing Division shall establish a procedural schedule to hear the matter.

#### Section 2.6(1)

Pursuant to the Agreement, the Commission shall approve an adjustment clause or clauses which among other things would provide for a purchased power adjustor ("PPA") for service after July 1, 2004 for Standard Offer obligations. Part of the justification for the PPA was the fact that these costs would be outside of the Company's control.

We concur that a PPA would result in less risk to the Company resulting in lower costs for the Standard Offer customers. As a result, we will approve the concept of the PPA as set forth in Section 2.6(1) with the understanding that the Commission can eliminate the PPA once the Commission has provided reasonable notice to the Company.

Requested Waivers

Section 4.3 of the Agreement would automatically act to exempt APS and its affiliates from the application of a wide range of provisions under A.R.S. Title 40. In addition, under Section 4.5 of the Agreement, Commission approval without modification will act to grant certain waivers to APS and its affiliates of a variety of the provisions of the Commission's affiliate interest rules (A.A.C. R14-2-801, et seq.), and the rescission of all or portions of certain prior Commission decisions.

Staff recommended that the Commission reserve its approval of the requested statute waivers until such time as their applicability can be evaluated on an industry-wide basis, rather than providing a blanket exemption for APS and its affiliates. Additionally, Staff recommended that the Commission not waive the applicability of A.A.C. R14-2-804(A), in order to preserve the regulatory authority needed by the Commission to justify approving Exempt Wholesale Generator ("EWG") status for APS' generation affiliate.

We concur with Staff. Accordingly, the requested statutory waivers shall not be granted by this Decision. Those waivers will be considered in an industry-wide proceeding to be scheduled at the Commission's earliest convenience. The requested waivers of affiliate interest rules and rescission of prior Commission decisions shall be granted, except that the provisions of A.A.C. R14-2-804(A) shall not be waived.

ANALYSIS/SUMMARY

Consistent with our determination in Decision No. 60977, the following primary objectives need to be taken into consideration in deciding the overall stranded cost issue:

- A. Provide the Affected Utilities a reasonable opportunity to collect 100 percent of their unmitigated stranded costs;
- B. Provide incentives for the Affected Utilities to maximize their mitigation effort;
- C. Accelerate the collection of stranded costs into as short of a transition period as possible consistent with other objectives;
- D. Minimize the stranded cost impact on customers remaining on the standard offer;
- E. Don't confuse customers as to the bottom line; and

F. Have full generation competition as soon as possible.

The Commission also recognized in Decision No. 60977 that the aforementioned objectives were in conflict. Part of that conflict is reflected in the following language extracted from Decision No. 60977:

One of the main concerns expressed over and over by various consumer groups was that the small consumers would end up with higher costs during the transition phase and all the benefits would flow to the larger users. At the time of the hearing, there had been minimal participation in California by residential customers in the competitive electric market place. It is not the Commission's intent to have small consumers pay higher short-term costs in order to provide lower costs for the larger consumers. Accordingly, we will place limitations on stranded cost recovery that will minimize the impact on the standard offer.

Decision No. 61677 modified Decision No. 60977 and allowed each Affected Utility to chose from five options.

With the modifications contained herein, we find the overall Settlement satisfies the objectives set forth in Decision Nos. 60977 and 61677. We believe the Settlement will result in an orderly process that will have real rate reductions<sup>6</sup> during the transition period to a competitive generation market. The Settlement allows every APS customer to have the immediate opportunity to benefit from the change in market structure while maintaining reliability and certainty of delivery. Further, the Settlement in conjunction with the Electric Rules will provide every APS customer with a choice in a reasonable timeframe and in an orderly manner. If anything, the Proposed Settlement favors customers over competitors in the short run since APS has agreed to reductions in rates totaling 7.5 percent'. This Commission supports competition in the generation market because of increased benefits to customers, including lower rates and greater choice. While some of the potential competitors have argued that higher "shopping credits" will result in greater choice, we find that a higher shopping credit would also mean less of a rate reduction for APS customers. We find that the Settlement strikes the proper balance between competing objectives by allowing immediate

<sup>6</sup> There have been instances in other states where customers were told they would receive rate decreases which were then offset by a stranded cost add-on.

Pursuant to Decision No. 59601, dated April 24, 1996, 0.68 percent of that decrease would have occurred on July 1, 1999.

rate reductions while maintaining a relatively short transition period for collection of stranded costs, followed shortly thereafter with a full rate case. At that point in time the collection of stranded costs will be completed and unbundled rates can be modified based upon an updated cost study.

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

### FINDINGS OF FACT

1. APS is certificated to provide electric service as a public service corporation in the State of Arizona.

2. Decision No. 59943 enacted R14-2-1601 through -1616, the Retail Electric Competition Rules.

3. Following a hearing on generic issues related to stranded costs, the Commission issued Decision No. 60977, dated June 22, 1998.

4. Decision No. 61071 adopted the Emergency Rules on a permanent basis.

5. On August 21, 1998, APS filed its Stranded Costs plan.

6. On November 5, 1998, APS filed the Staff Settlement Proposal.

7. Our November 24, 1998 Procedural Order set the matter for hearing.

8. Decision No. 61259 established an expedited procedural schedule for evidentiary hearings on the Staff Settlement Proposal.

9. The Court issued a Stay of the Commission's consideration of the Staff Settlement Proposal.

10. Staff withdrew the Staff Settlement Proposal from Commission consideration.

11. On May 17, 1999, APS filed its Settlement requesting Commission approval.

12. Our May 25, 1999 Procedural Order set the Settlement for hearing commencing on July 14, 1999.

13. Decision No. 61311 (January 11, 1999) stayed the effectiveness of the Emergency Rules and related Decisions, and ordered the Hearing Division to conduct further proceedings in this Docket.

1        14. In Decision No. 6 1634 (April 23, 1999), the Commission adopted modifications to  
2 R14-2-201 through-207, -210 and 212 and R14-2-1601 through-1617.

3        15. Pursuant to Decision No. 61677, dated April 27, 1999, the Commission modified  
4 Decision No. 60977 whereby each Affected Utility could choose one of the following options: (a)  
5 Net Revenues Lost Methodology; (b) Divestiture/Auction Methodology; (c) Financial Integrity  
6 Methodology; (d) Settlement Methodology; and (e) the Alternative Methodology.

7        16. APS and other Affected Utilities filed with the Arizona Superior Court various appeals  
8 of Commission Orders adopting the Competition Rules and related Stranded Cost Decisions (the  
9 "Outstanding Litigation").

10       17. Pursuant to Decision No. 61677, APS, RUCO, AECC, and ACAA entered into the  
11 Settlement to resolve numerous issues, including stranded costs and unbundled tariffs.

12       18. The difference between market based prices and the cost of regulated power has been  
13 generally referred to as stranded costs.

14       19. Any stranded cost recovery methodology must balance the interests of the Affected  
15 Utilities, ratepayers, and the move toward competition.

16       20. All current and future customers of the Affected Utilities should pay their fair share of  
17 stranded costs.

18       21. Pursuant to the terms of the Settlement Agreement, APS has agreed to the  
19 modification of its CC&N in order to implement competitive retail access in its Service Territory.

20       22. The Settlement Agreement provides for competitive retail access in APS' Service  
21 Territory, establishes rate reductions for all APS customers, sets a mechanism for stranded cost  
22 recovery, resolves contentious litigation, and therefore, is in the public interest and should be  
23 approved.

24       23. The information and formula for rate reductions contained in Exhibit AP-3 Appended.  
25 to APS Exhibit No. 2 provides current financial support for the proposed rates.

26       24. RUCO, ACAA, and AECC collectively, **represent** residential and non-residential  
27 customers.

38       25. According to AECC, the Agreement results in higher shopping credits than in the Staff



Settlement Proposal as well as those offered by SRP.

26. The decremental approach for metering and billing will not provide sufficient credits for competitors to compete.

27. Pursuant to the Settlement, customers will receive substantial rate reductions without the necessity of a full rate case.

28. An APS rate case would take a minimum of one year to complete.

29. ESPs that have been certificated have shown more of an interest in serving larger business customers than residential customers.

30. It is not in the public or customers' interests to forego guaranteed Standard Offer rate reductions in order to have a higher shopping credit.

31. The Settlement will permit competition in a timely and efficient manner and insure all customers benefit during the transition period.

32. Based on the evidence presented, the FVRB and FVROR of APS is determined to be \$5,195,675,000 and 6.63 percent, respectively.

33. The terms and conditions of the Settlement Agreement as modified herein are just and reasonable and in the public interest.

#### CONCLUSIONS OF LAW

1. The Affected Utilities are public service corporations within the meaning of the Arizona Constitution, Article XV, under A.R.S. §§ 40-202, -203, -250, -321, -322, -331, -336, -361, -365, -367, and under the Arizona Revised Statutes, Title 40, generally.

2. The Commission has jurisdiction over the Affected Utilities and of the subject matter contained herein.

3. Notice of the proceeding has been given in the manner prescribed by law.

4. The Settlement Agreement as modified herein is just and reasonable and in the public interest and should be approved.

5. APS should be authorized to implement its Stranded Cost Recovery Plan as set forth in the Settlement Agreement.

6. APS' CC&N should be modified in order to permit competitive retail access in APS'

1 CC&N service territory.

2 7. The requested statutory waivers should not be granted at this time. A proceeding  
3 should be commenced to consider statutory waivers on an industry-wide basis. The other waivers  
4 requested by APS in the Settlement should be granted as modified herein, except that the provisions  
5 of A.A.C. R14-2-804(A) shall not be waived.

6 ORDER

7 IT IS THEREFORE ORDERED that the Settlement Agreement as modified herein is hereby  
8 approved and all Commission findings, approvals and authorizations requested therein are hereby  
9 granted.

10 IT IS FURTHER ORDERED that Arizona Public Service Company's CC&N is hereby  
11 modified to permit competitive retail access consistent with this Decision and the Competition Rules.

12 IT IS FURTHER ORDERED that within 30 days of the date of this Decision, Arizona Public  
13 Service Company shall file a proposed Code of Conduct for Commission approval.

14 IT IS FURTHER ORDERED that Arizona Public Service Company shall file a revised  
15 Settlement Agreement consistent with the modifications herein-

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IT IS FURTHER ORDERED that within ten days of the date the proposed Code of Conduct is filed, the Hearing Division shall issue a Procedural Order setting a procedural schedule for consideration of the Code of Conduct.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

  
CHAIRMAN

  
COMMISSIONER

  
COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ~~6th~~ 14th day of ~~May~~ October 1999.

  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

DISSENT  
JLR:dap

1 SERVICE LIST FOR:

ARIZONA PUBLIC SERVICE COMPANY

2 DOCKET NOS.:

E-01345A-98-0473, E-01345A-97-0773 and RE-  
00000C-94-0165

3  
4 Service List for RE-00000C-94-0165

5 Paul A. Bullis, Chief Counsel  
6 LEGAL DIVISION  
1200 W. Washington Street  
Phoenix, Arizona 85007

7 Utilities Division Director  
8 ARIZONA CORPORATION COMMISSION  
1200 W. Washington Street  
9 Phoenix, Arizona 85 007

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